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No. 05-561

FILED
FEB 3 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

JOSEPH TOCCI,

Petitioner,

v.

FORT WAYNE – ALLEN COUNTY AIRPORT AUTHORITY, CITY OF FORT WAYNE AND ALLEN COUNTY,

Respondents.

On Petition For Writ Of Certiorari To The United States Supreme Court

PETITION FOR REHEARING

JOSEPH A. TOCCI, JR.
CHAIRMAN, SMDFUND, INC.
(Petitioner)
5525a Coldwater Rd., Box 107
Fort Wayne, IN 46825
(260) 740-7126

Pro se

PARTIES TO THE PROCEEDING

The parties in the proceeding are:

Fort Wayne – Allen County Airport Authority, a municipal corporation.

City of Fort Wayne, a municipal corporation.

County of Allen, a municipal corporation.

SMDfund, Inc., Joe Tocci, Chairman and Scott W. Noble, Treasurer, a public interest advocacy for historic Smith Field Airport.

JUSTIFICATION

Petitioner seeks reconsideration by the Court for three reasons.

1) The Court's denial of certiorari occurred after the formal resignation of Justice O'Conner and before the confirmation of newly nominated Justice Alito. We cannot know whether Petitioner earned no votes or just one shy of a grant. Since the composition of the Court has changed after the denial but before the petition for rehearing window has closed, an *'intervening circumstance of a substantial or controlling effect'* of Rule 44.2 may have occurred. And there may now be a different result in a new conference.

Petitioner fully appreciates that the Court experiences membership transitions in the normal course of its duties and that it cannot suspend conference proceedings merely to preempt petitions for rehearing. But Petitioner is compelled by our heritage to approach once again where the rules allow.

2) The original petition may more appropriately have been for a writ of mandamus. Absent a trial, the Court is handicapped, if not unable, to examine the full body of argument that would have been qualified in formal proceedings before having arrived here. For certiorari, the Court is left to sort out what amounts to little more than allegations hurled against the courthouse doors by all parties but which have not been scrubbed of irrelevancies or tested for factuality.

The principals of SMDfund have always felt that this case calls for trial before very public scrutiny but had always deferred to council's preference for summary

judgment. In this last opportunity, we wish to proceed to trial in the local jurisdiction with special instructions,

a) due to the inevitable pressures that descend upon government officials operating in the Airport Authority's jurisdiction over their twenty-year tenure, we doubt that any court within that jurisdiction can rule freely on the questions. We request that this Court remand for a trial in the neighboring county of Whitley, Wells or Adams, b) we think it appropriate that since Allen County leadership brought the facially unconstitutional enabling law that the state legislature adopted in adversity to the City of Fort Wayne, all court costs should be carried by Allen County and/or the state legislature, c) because the facts in this case are encyclopedic but are otherwise not technically arcane, the trial court will benefit from a jury to discern the truth. We request that the selected court empanel a jury for this trial.

3) We wish to simplify the original questions brought before this Court, to wit:

Under the United States Constitution, may a state constitutional challenge be denied a *ruling on the question* by way of time constraints such as statutes of limitation or laches?

ARGUMENT

At every venue where Petitioner has appealed for relief, his government has denied him review on the merits. The evidence, too voluminous to incorporate in a petition, demonstrates that the legislative branches of our state government have habitually violated an explicit

prohibition by the state constitution and denied due process in refusing to move our petition to protect Smith Field with local listing to the Historic Registry. The executives of the county and city governments refused to use their statutory power of appointment to constrain defiant behavior by the special district's un-elected board. Likewise, the legislative councils have refused to use their statutory powers of the purse to constrain the board.

The executive branch's Airport Authority has, since establishment, habitually stonewalled citizen efforts to enable self-funded development of the Field and corrupted the proceedings of the world's most efficient port development mechanism, the FAA's Airport Improvement Program, by using procedural tactics to prevent formal review of a viable competing plan. The state's lower court judiciary reliably inoculated this rogue conduct by adopting every preemptory theory presented.

In the end, the most demoralizing blow to Franklin's experiment in self-government and the people's trust in the rule of law is the Indiana Supreme Court's unanimous medieval stretch for the doctrine of laches as a bar against due process review of the facial unconstitutionality of this Airport Authority's establishment.

Comes now evidence that the Airport Authority has reversed its public sentiments for keeping the Field and returned to the same fraudulent footing it stood upon just before it voted to close and sell the Field in June 2002; non-viability and parasitic loss to big airport resources:

– *these news articles*:

http://www.fortwayne.com/mld/fortwayne/news/local/13652360.htm

http://www.fortwayne.com/mld/journalgazette/13690725.htm

http://www.fortwayne.com/mld/fortwayne/news/local/13698425.htm

Shall the United States Supreme Court perfect these strange rulings by allowing them to prevail? Petitioner is seeking justice in the disposition of a treasure, not in his private interest, but in the public estate. Shall our highest Court also deny him access to judicial review on the merits? We pray that this Court will view the dismissal of our question as corrosive to the republic and grant a writ of mandamus with these special instructions.

Respectfully submitted,

JOSEPH A TOCCI, JR.
(Petitioner)
5525a Coldwater Rd., Box 107
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(260) 740-7126

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CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay.

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Joseph A. Tocci, Jr.